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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,064	11/16/2001	Bernadette Gibbs	53394.000520	7549
21967	7590	12/31/2003	EXAMINER	
HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			ANDERSON, CATHARINE L	
		ART UNIT		PAPER NUMBER
		3761		
DATE MAILED: 12/31/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	C8
	09/988,064	GIBBS ET AL.	
	Examiner C. Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 October 2003.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-62 is/are pending in the application.
  - 4a) Of the above claim(s) 51-56 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-50 and 57-62 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \*    c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12, 16-27, and 37-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al. (5,749,866).
3. With respect to Claims 1-3, 6-12, 19-21, 37, 38, and 41-47: Roe discloses the use of an absorbent article (20) with a topsheet (24), backsheet (26) and core (28) located there between. Roe discloses the use of a back waist region (46), a front waist region (45) and a crotch region located there between (see all Figures). Roe discloses two connection mechanism (36) each containing gripping mechanisms (40) adjacent the back waist region and a target strip (41) located in the front wait region, and where the back waist region stretches 50% (therefore 150% of its original length) with 5 g/cm force (column 12, lines 2-4). The back waist region also comprises an area 34 that has an extension force of 5 to 10 times greater than that of the area 38 of the back waist region. The area 34 of the back waist region therefore will stretch 50% when a force of between 25 g/cm and 50 g/cm. Therefore if an 800 gram force is applied to a 4 inch wide cut portion (800g/4inch or approximately 79 g/cm), then it is the examiners position that the waist regions will stretch more than 50% (150 times its original length), since Roe discloses the back waist region, comprising areas 34 and 38, stretches by 150%

when a force of between 5 g/cm and 50 g/cm is applied. The back waist region (34, 38) and the connection mechanism (36) together form a composite waist region.

4. With respect to Claims 4, 5, 39 and 40: Roe discloses an alternative fastening system to a tape tab uses hook and loop type fasteners (column 32, lines 2-20).

5. With respect to Claims 16-18, 22-27: Roe discloses that in the width direction of the web that forms the side panels (connection mechanisms) and the waist regions, the material is capable of stretching over 100%, with just about 500 g/inch. It is the examiner's position that the stretchability of the width of the waist region and the connection mechanisms is the stretchability of the base web itself, due to the fact that the web is only crimped in one directions (the length). The claims state a 4 inch wide laterally cut portion, the claim does not set forth the longitudinally cut portion, therefore with a cut portion of 1 inch, it would give a force of 1000 or 1200 g/inch. According to Figure 5, this will give an elongation well over 100% (200%) its original length. Therefore it is the examiner's position that the waist region will have a stretch greater than 140% of its original length and the connection mechanism will have a stretch over 220% its original length.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 13-15, 28-33, 34-36, 48-50, 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (5,749,866).

9. With respect to Claims 13-15, 28-33, 48-50, and 57-59: Roe discloses the use of an absorbent article (20) with a topsheet (24), backsheets (26) and core (28) located there between. Roe discloses the use of a back waist region (46), a front waist region (45) and a crotch region located there between (see all Figures). Roe discloses two connection mechanism (36) each containing gripping mechanisms (40) adjacent the back waist region and a target strip (41) located in the front wait region, and where the back waist region stretches 50% (therefore 150% of its original length) with 5 g/cm force (column 12, lines 2-4). Therefore if an 800 gram force is applied to a 4 inch wide cut portion (800g/4inch or approximately 79 g/cm), then it is the examiners position that the waist regions will stretch more than 50% (150 times its original length).

10. Roe also discloses the side panels extending 43mm from the side edge of the back waist (column 26, lines 36-38) and has an available stretch of 110% (210% the

original length) (column 25, lines 55-57), the front waist and rear waist having a length of 180mm and an available stretch of 60% or 160% the original length (column 25 line 37-50 and column 28 lines 19-28). Therefore this would give a Max stretch of the entire circumference (Max Stretch of side panels, plus Max Stretch of front waist region plus Max Stretch of back waist region), using the claimed invention where  $n=1$ , of approximately 170%. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the Max Stretch of the waist circumference to be greater than about 185%, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 372, 205 USPQ 215)

11. With respect to claiming that it is for a newborn, for a walking baby and for a crawling baby, these are all considered functional limitations and it is the examiner's position that the article of Roe is perfectly capable of being worn by all of these stages.

12. With respect to Claims 34-36 and 60-62: As it would be obvious to have the MaxStretch greater than 185%, and as explained above how the diaper is perfectly capable of being worn for a newborn, crawling and walking baby, then having the MaxStretch be 185 for all of these, would result in a stretchability index of greater than 540 for each of these.

#### ***Response to Arguments***

Applicant's arguments filed October 7, 2003 have been fully considered but they are not persuasive.

Roe discloses a back waist region, shown in figure 1 as areas 34 and 38, which stretches by 150% of its original width when a 5 to 50 g/cm force is applied, as described in the rejection under 35 U.S.C. 102(b) above. The force required to stretch the back waist region of Roe by 150% is less than the force disclosed in the instant claim. It is therefore the examiner's position that if the back waist region of Roe was subjected to a force of the magnitude disclosed in the instant claim, the back waist region would stretch by greater than 150% of its original width, as the force is greater. The percent by which the back waist region of Roe will stretch does not depend on the size of the back waist region, and therefore if a 4 inch portion of the back waist region of Roe was cut from the article and force was applied, the 4 inch portion of the back waist region would inherently stretch by greater than 150%. The limitation in the instant claim defining the 4 inch portion as being of the composite waist region does not effect the percent by which the back waist region would stretch either, since the claim discloses that it is the waist region adjacent the connection mechanism (the back waist region, in the case of Roe) that is capable of stretching. Application of the claimed force to a 4 inch portion of the composite waist region of Roe would therefore still stretch by greater than 150%. Roe discloses in Figure 2 that the back waist region consists only of the discrete panel material, and therefore the extensibility of the panel material will be the same as the extensibility of the back waist region. Roe therefore discloses all aspects of the claimed invention.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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December 24, 2003

*GKD*  
GLENN K. DAWSON  
PRIMARY EXAMINER